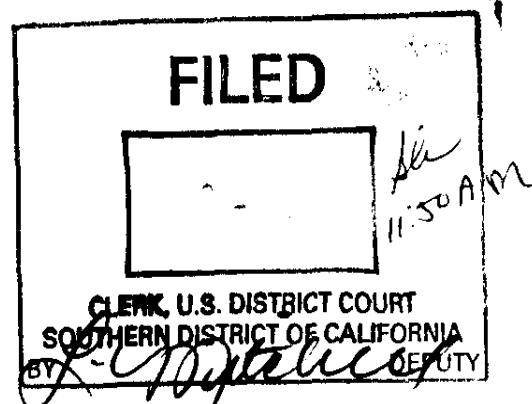


LMM 8/6/01 12:16

3:01-CV-01206 BANC OF AMERICA V. APOLLO FISHERIES

\*21\*

\*TRO.\*



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BANC OF AMERICA SPECIALTY  
FINANCE, INC., a North Carolina  
Corporation, successor-in-interest and  
formerly known as NATIONSCREDIT  
COMMERCIAL CORPORATION OF  
AMERICA.

CASE NO. 01CV1206 BTM (LSP)

TEMPORARY RESTRAINING  
ORDER

Plaintiff,

vs.

APOLLO FISHERIES SERVICE, INC.  
dba BLUE PORPOISE MARINE;  
NATALIE CINTAS-GLADNICK, an  
individual, and RONALD GLADNICK,  
an individual,

Defendants.

Specialty Finance, formerly NationsCredit Commercial Corporation of America, entered into a "Security Agreement-Inventory" ("Agreement") with Blue Porpoise Marine ("Blue Porpoise"). Pursuant to the Agreement, Specialty Finance agreed to finance Blue Porpoise's purchase of boat and engine inventory. In turn, Blue Porpoise granted Specialty Finance a security interest in Blue Porpoise's inventory and other property. Specialty Finance perfected its interest by recording an executed UCC-1 Financing Statement with the California Secretary of State in August of 1997.

In May of 2001, Specialty Finance determined that Blue Porpoise defaulted as a result of its failure to make payments due under the Agreement. Accordingly,

1 Specialty Finance accelerated Blue Porpoise's indebtedness and demanded payment  
 2 in full, as provided for in the Agreement.

3 On July 17, 2001, Specialty Finance employee Kevin Culwell ("Culwell")  
 4 surveyed the Blue Porpoise inventory that is financed by Specialty Finance. (See  
 5 Wood Decl., ¶ 6.) Upon inspection, Culwell determined that a boat and two engines  
 6 were missing. (*Id.*) Culwell was told that the missing inventory was sold for \$98,080.  
 7 (*Id.*) According to Specialty Finance's Vice President of Special Assets, Allen Wood,  
 8 Blue Porpoise has not remitted proceeds from the sale of the boat and engines, which  
 9 constitutes another default under the Agreement. (*Id.*, ¶ 9.)

10 A Temporary Restraining Order ("TRO") will be granted when the moving party  
 11 shows either "(1) a combination of probable success on the merits and the possibility  
 12 of irreparable injury, or (2) that serious questions are raised and the balance of  
 13 hardships tips sharply in favor of the moving party." Stuhlbarg Int'l Sales Co., Inc. v.  
 14 John D. Brush & Co., Inc., 240 F.3d 832, 839 (9th Cir. 2001). "These standards are  
 15 not separate tests but the outer reaches of a single continuum." *Id.* (quotations  
 16 omitted). A TRO is not an "adjudication on the merits, but a device for preserving the  
 17 status quo and preventing the irreparable loss of rights before judgment." Textile  
 18 Unlimited, Inc. v. A. BMH & Co., Inc., 20 F. 3d 781, 786 (9th Cir. 2001).

19 Blue Porpoise does not dispute that it is financially indebted to Specialty  
 20 Finance. Blue Porpoise similarly does not deny that it sold inventory financed by  
 21 Specialty Finance for \$98,080. Further, Blue Porpoise does not dispute that it owes  
 22 the proceeds of that sale to Security Finance. In fact, Blue Porpoise maintains that  
 23 it has "segregated these funds and stands prepared to forward the funds to Specialty  
 24 Finance at once." (Gladnick Decl., ¶ 7.) Accordingly, the likelihood that Specialty  
 25 Finance will prevail on the merits is high.

26 Specialty Finance maintains that it will be irreparably harmed if further inventory  
 27 is sold and proceeds are not remitted to Specialty Finance because there will be no  
 28 remaining collateral to retire Blue Porpoise's outstanding debt. The Court agrees.

1 Moreover, the Court finds that the balance of the hardships weighs entirely in  
2 Specialty Finance's favor. While Specialty Finance could potentially lose its security  
3 interest, Blue Porpoise experiences no hardship whatsoever in remitting proceeds  
4 from sales that it is already obligated to pay to Specialty Finance as set forth under  
5 the Agreement.

6 Accordingly, Apollo Fisheries Service, Inc. dba Blue Porpoise Marine, their  
7 officers, directors, managers, members, employees, servants, agents and  
8 representatives are hereby restrained from:

9 (1) disposing of, disbursing, or transferring funds or proceeds generated by  
10 the sale of any of the below listed inventory to any party other than  
plaintiffs.

11 Model No: 208ADVEN  
12 Serial No: NTLAD570J  
13 Blue Porpoise Marine  
1455 West Morena Blvd.  
San Diego, CA 92110

15 and

16 Model No: 200 HP  
17 Serial No: 100119  
18 Blue Porpoise Marine  
1455 West Morena Blvd.  
San Diego, CA 92110

19 and

20 Model No: 200HP  
21 Serial No: 101202  
22 Blue Porpoise Marine  
1455 West Morena Blvd.  
San Diego, CA 92110

23 and

24 Model No: 208ADVEN  
25 Serial No: NTLAD675C  
26 Blue Porpoise Marine  
1455 West Morena Blvd.  
San Diego, CA 92110

27 and

28 Model No: 233TOURN  
Serial No: NTLBK325  
Blue Porpoise Marine  
1455 West Morena Blvd.  
San Diego, CA 92110

1 and

2 Model No: 200HP  
3 Serial No: 102730  
4 Blue Porpoise Marine  
1455 West Morena Blvd.  
San Diego, CA 92110

5 (2) disbursing or transferring the \$98,080 in proceeds from the recent sale  
6 of the bellow listed inventory to any party other than plaintiffs.

7 Model No: 300MARLI  
8 Serial No: NTLEA341  
9 Blue Porpoise Marine  
1455 West Morena Blvd.  
San Diego, CA 92110

10 and

11 Model No: 250HP  
12 Serial No: 1AX105885  
13 Blue Porpoise Marine  
1455 West Morena Blvd.  
San Diego, CA 92110

15 and

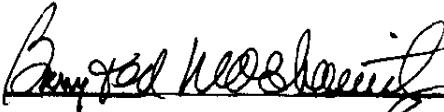
16 Model No: 250HP  
17 Serial No: 1BX103159  
18 Blue Porpoise Marine  
19 1455 West Morena Blvd.  
San Diego, CA 92110

20 (3) Disposing of, selling, or transferring title to any of the inventory listed in  
21 (1), unless for proceeds received ~~in full and fair consideration, are the~~  
~~full market value of the inventory sold.~~

22 The Court denies the ex parte application for the a writ of possession at this  
23 time. The Court will hold a status hearing on August 8, 2001 at 2:30 p.m., and the  
24 TRO will remain in effect until the conclusion of such hearing unless otherwise  
25 ordered by the Court.

26 **IT IS SO ORDERED.**

27 Dated: August 2, 2001  
28 Effective ~~8/2/01~~ PDST.  
cc: 8:35

  
HONORABLE BARRY TED MOSKOWITZ  
United States District Judge

29 cc: Magistrate Judge Papas  
30 All counsel of record